



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

May 5, 1999

Bernard Neal Ackerman, Treasurer
Spratt for Congress Committee
P.O. Box 830
York, SC 29745

RE: MUR 4811
John Spratt for Congress Committee
and Bernard Neal Ackerman, as treasurer

Dear Mr. Ackerman:

On September 25, 1998, the Federal Election Commission notified the John Spratt for Congress Committee ("the Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") Chapters 95 and 96 of Title 26, U.S. Code. A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by the Committee, the Commission, on April 28, 1999, found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Act. Chapters 95 and 96 of Title 26, U.S. Code. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Designation of Counsel Form
Factual and Legal Analysis
Conciliation Agreement

cc: Honorable John M. Spratt, Jr.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: John Spratt for Congress Committee
and Bernard Neal Ackerman, as treasurer

MUR: 4811

This matter was generated by a complaint filed with the Federal Election Commission by Trey Walker, Executive Director of the South Carolina Republican Party. See 2 U.S.C. § 437g(a)(1). Complainant alleged that the John Spratt for Congress Committee ("the Committee"), principal campaign committee for Representative John M. Spratt (5th District, South Carolina), and Bernard Neal Ackerman, as treasurer, violated 2 U.S.C. § 441d(a) by distributing yard signs expressly advocating the election of John Spratt for Congress without the proper disclaimers identifying who authorized and paid for the communication.

Pursuant to 2 U.S.C. § 441d(a), all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must include a disclaimer. Pursuant to Section 441d(a), the disclaimer must clearly state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee. According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner.

A disclaimer need not appear on the front of the communication as long as it appears within the communication, except on communications such as billboards that contain only a front face.

11 C.F.R. § 110.11(a)(5)(i).

A. Complaint

According to the complaint, John Spratt for Congress Committee purchased and distributed yard signs and 4' x 8' road signs expressly advocating the election of John Spratt to U.S. Congress. The complaint states that the yard signs failed to display any type of authorization notice identifying who paid for the communications. Complainant alleges his belief that the Spratt Campaign distributed over 300 yard signs in direct violation of the law.

B. Response

In response to the complaint, respondents admit that they distributed a limited number of both yard signs and road signs during both the 1996 and 1998 election cycles that lacked the required disclaimer. Respondents state that all signs purchased for the 1998 election displayed the proper disclaimer, but that some portion of the yard and road signs recycled from the 1996 election lacked the proper disclaimer. Specifically, respondents state that they purchased one lot of yard signs and road signs from Screen Art, Inc. in Greenville, South Carolina during the 1996 election cycle which did not contain the proper disclaimer.¹ Respondents claim that this mistake occurred in the 1996 election due to the printer's error.² Respondents state that an unspecified number of these signs were distributed before the omission of the authorization was discovered.

¹ The Committee's 1996 July Quarterly Report discloses a disbursement to Screen Art Printing totaling \$7,209.93 on June 18, 1996, and its 1996 Pre-General Report discloses a disbursement to Screen Art Printing totaling \$672 on October 16, 1996.

² The response did not indicate whether the Committee had an opportunity to prevent the "printer's error" by reviewing a proof prior to distribution. Thus, it is not even clear that the Commission would agree that the initial omission of the disclaimer was the printer's fault and not the campaign's.

Once the omission was detected during the 1996 election cycle, the Committee stated that they called the Commission staff for guidance. According to the response, Commission staff advised the Committee that the omission could be corrected by stamping an appropriate authorization on the face of the signs. The Committee attempted to rectify the mistake by stamping the appropriate disclaimers on the face of all signs still in their possession, and whenever detected, to all signs that had already been distributed during the 1996 election cycle.

The respondents state that at the conclusion of the 1996 election, approximately 100 yard signs and 30 road signs were recovered and stored for re-use in the 1998 election. According to the Committee some of these signs lacked the authorization label, and in storage, were mixed with others bearing the authorization.

C. Discussion

The respondents admit that an unknown portion of the recycled signs that were distributed in connection with the 1998 election lacked the required disclaimer. Respondents do not dispute that the language on the 1996 signs constituted express advocacy.³ Based on these facts, there is reason to believe that the John Spratt for Congress Committee and Bernard Neal Ackerman, as treasurer, violated 2 U.S.C. § 441d.

³ The only information received about the sign's actual language is a proof of a 1998 sign provided by the respondent.